REMARKS

The last Office Action of November 26, 2001 has been carefully

considered. Reconsideration of the instant application in view of the foregoing

amendments and the following remarks is respectfully requested.

Claims 1-16 are pending in the application.

It is noted that claim 16 is rejected under 35 U.S.C Section 101 because

the claimed recitation of a use is set forth without setting any steps. The claims

are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for

failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention.

Claims 1-7 and 16 stand rejected under 35 U.S.C. §102(b) as being

anticipated by U.S. Pat. No. 6,171,785 (hereinafter "Higuchi").

Claims 8-13 stand rejected under 35 U.S.C. §103(a) as being

unpatentable over Higuchi in view of U.S. Pat. No. 6,121,603 (hereinafter "Hang")

REJECTION OF CLAIM 16 UNDER 35 U.S.C. §101

Applicant has cancelled claim 16, so that the rejection thereof is obviated.

Withdrawal of the rejection of claim 16 under 35 U.S.C. §101, is thus

respectfully requested.

REJECTION OF CLAIMS 1-5, 7-8, 10-11 AND 16 UNDER 35 U.S.C. §112,

SECOND PARAGRAPH

Applicant has cancelled claims 1-16 so that any rejection thereof are

thereby obviated.

Withdrawal of the rejection of claims 1-5, 7-8, 10-11 and 16 under 35

U.S.C. §112, second paragraph is thus respectfully requested.

REJECTION OF CLAIMS 1-7, 16 UNDER 35 U.S.C. §102(b) AS BEING

ANTICIPATED BY HIGUCHI.

Applicant has cancelled claims 1-7 and 16 and has presented new claim

17 setting forth the method and method steps applicant considers to be his

invention.

Claim 17 as presently submitted is reciting the method steps, which the

Examiner found lacking in prior claim 1. In particular, the claim sets forth that the

sample containing the DNA and/or the RNA sequences are free from fluorescent

additives. Support for this is found on page 2, lines 7, 8 and 9 of the description.

The gist in applicant's' invention lies in the fact that a binding agent such as a

fluorescent dye is not used. The new claim 17 clearly states that the sample is

free of fluorescent additives.

Higuchi, on the other hand, teaches only the use of measuring amplified

DNA or RNA sequences with the aid of fluorescence additives. This is also

clearly set forth in the abstract. As such, Higuchi discloses and claims a different

method of detection and measuring from that claimed by applicant. The

Examiner states that Higuchi uses "light scattering" for monitoring. The Examiner

also stated Higuchi uses "a spectra fluorometer measuring light scattering" which

indicates that the method relies on a fluorescent agent. Furthermore, Higuchi

operates by introducing detectable DNA binding agents into the amplification

reaction, which agents produce a detectable signal that is enhanced upon

binding double-stranded DNA. The binding agent is fluorescent dye, or an

intercalating dye, part of the prior art. Higuchi teaches the addition of agents that

produce the signal. In contrast, the invention teaches not to add any agents or

additives that produce a signal.

It is believed that the new claim 17 thus clearly distinguishes over Higuchi.

Withdrawal of the rejection of claims 1-7 and 16. under 35 U.S.C. §102(b)

is therefore respectfully requested.

REJECTION OF CLAIMS 8-13 UNDER 35 U.S.C. §103(a) AS BEING

UNPATENTABLE OVER HIGUCHI IN VIEW OF HANG.

Applicant has cancelled claims 8-15 directed to the device. In view of the

cancellation of these claims, the Examiner's rejection based on Higuchi in view of

Hang has been obviated.

Withdrawal of the rejection of claims 8-15 under 35 U.S.C. §103(a) and

allowance thereof are thus respectfully requested.

REJECTION OF CLAIMS 14-15 UNDER 35 U.S.C. §103(a) AS BEING

UNPATENTABLE OVER HIGUCHI IN VIEW OF LEHNEN

Applicant has cancelled claims 14-15 directed to the device. In view of the

cancellation of these claims, the Examiner's rejection based on Higuchi in view of

Lehnen has been obviated.

Withdrawal of the rejection of claims 8-15 under 35 U.S.C. §103(a) and

allowance thereof are thus respectfully requested.

GENERAL COMMENTS

Submitted herewith are a new Power of Attorney, the prior Power of

Attorney having been withdrawn by the inventors. Submitted herewith is also a

separate Request to Change Mailing Address and a Request for Corrected Filing

Receipt, in order to rectify the incorrect dates stated on the receipt.

In this connection, it is noted that the Examiner has acknowledged

applicants' claim for priority but questioned the dates of the priority application.

Applicants state that the correct dates of the priority applications are set forth in

the declaration signed by the inventors. Thus, the German priority application

DE 198 14 68.2 was filed on April 1, 1988 and the International application

PCT/EP99/02242 was filed on April 1, 1999. Apparently a corrected filing receipt

has been requested by the prior attorneys and received, but the date was not

corrected. The paragraph indicating the claim of priority has been added to the

application by the above amendment.

It is also noted that the Examiner has not made of record the priority

document. A copy of the priority document was ordered to have been sent as

part of the PCT procedure. It is believed that the priority document has been

forwarded by the filing authority to the Patent Office. Applicant believes that the

issues directed to the claim of priority has been addressed and obviated,

however if there are any remaining issues, the applicant respectfully requests to

be apprised of any omission.

CONCLUSION

Applicant believes that when the Examiner reconsiders the claims in the

light of the above comments, he will agree that the invention is in no way properly

met or anticipated or even suggested by any of the references however they are

considered.

None of the references discloses a method of measuring amplified DNA

and/or RNA sequences without fluorescence agents.

In view of the above presented remarks and amendments, it is respectfully

submitted that all claims on file should be considered patentably differentiated

over the art and should be allowed.

Reconsideration and allowance of the present application are respectfully

requested.

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Should the Examiner consider necessary or desirable any formal changes

anywhere in the specification, claims and/or drawing, then it is respectfully

requested that such changes be made by Examiner's Amendment, if the

Examiner feels this would facilitate passage of the case to issuance. If the

Examiner feels that it might be helpful in advancing this case by calling the

undersigned, applicant would greatly appreciate such a telephone interview.

The Commissioner is hereby authorized to charge fees, which may be

required, or credit any overpayment to Deposit Account No. 06-0502.

Respectfully submitted,

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Date: February 12, 2002

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